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AUG 26 1983

ALEXANDER L. STEVAS,
CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1983

STANLEY RESNICK,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT**

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Statement of Questions Involved

1. Whether the Government established beyond a reasonable doubt federal jurisdiction over the offenses charged against the Petitioner.

2. Whether the Government proved that Petitioner was a knowing participant in the offenses charged.

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NO.
IN THE
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OCTOBER TERM, 1983

STANLEY RESNICK,

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UNITED STATES OF AMERICA,

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**PETITION FOR A WRIT OF CERTIORARI TO THE
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THIRD CIRCUIT**

Stanley Resnick, Petitioner, prays that a Writ of Certiorari issue to review the judgment from the United States Court of Appeals for the Third Circuit entered in the above entitled case on June 2, 1983. (Appendix A)

Opinion Below

The Court of Appeals for the Third Circuit entered a Judgment Order affirming the court below without opinion. That Judgment Order is printed in full as Appendix A.

Jurisdiction

The Judgment of the Third Circuit Court of Appeals was entered on June 2, 1983. The jurisdiction of this court is invoked under Title 28, United States Code, Section 1254 (1).

Constitutional Provisions Involved

Fifth Amendment to the Constitution of the United States (reprinted as Appendix B).

Statutes Involved

Title 18, United States Code, Section 371; Title 18, United States Code, Section 2314. (Reprinted as Appendix C).

Statement of the Case

The Petitioner, Stanley Resnick, was indicted by a Federal Grand Jury in the District of New Jersey on December 30, 1981. He was charged in two counts with violations of Title 18, United States Code, Section 371, a conspiracy to violate the provisions of Title 18, Sections 2314 and 1014* and was charged in a substantive count with the interstate transportation of stolen money, of a value of excess of \$5,000.00, in violation of Title 18, United States Code, Section 2314. After trial before a District Judge and a jury, the Petitioner was convicted

* All references to Title 18 U.S. Code § 1014 were redacted during the trial.

on all counts. Thereafter Petitioner was sentenced to a term of imprisonment for one year and one day on each count to run concurrently. The Petitioner filed a timely appeal from the judgment of the District Court. The United States Court of Appeals for the Third Circuit affirmed the judgment by Judgment Order on June 2, 1983. Thereafter Petitioner filed a timely Petition for Rehearing without an alternative suggestion of rehearing in Banc. The Petition for Rehearing was denied June 27, 1983 (Appendix D).

STATEMENT OF THE REASONS FOR GRANTING THE WRIT

1. The Government failed to prove federal jurisdiction over the offenses alleged in the indictment.

In the Court of Appeals the Petitioner argued two points. One, that the Government failed to prove that the defendant knowingly entered into a conspiracy to transport in interstate commerce more than \$5,000.00, which had been stolen. Secondly, that the Government had failed to prove beyond a reasonable doubt that the money allegedly taken by fraud was of an amount sufficient to establish the condition precedent for federal jurisdiction.

A. The substantive Charge.

The Statute involved, Title 18, U.S. Code, Section 2314, makes criminal, the transportation in interstate or foreign commerce of money of a value of \$5,000.00, or more, with knowledge that it has been stolen or taken by fraud. A failure of proof that the money, stolen or obtained

by fraud had the requisite value, in this case, left the federal court without jurisdiction. The burden upon the prosecution was to prove beyond a reasonable doubt, among other things, that the value of the stolen property transported was at least \$5,000.00. See *United States v. Robinson*, 687 F 2nd 359, 360 (11th Cir. 1982), *United States v. Dior*, 671 F 2nd 351, 357 (9th Cir. 1982), *United States v. Whetzel*, 589 F 2nd 707 D.C. Cir. 1978 and *United States v. Chandler*, 586 F 2nd 593 (5th Cir. 1978) Cert. Den. 440 U. S. 927 (1979).

In this case the Government failed to prove by credible evidence, beyond a reasonable doubt, value where a jury could find, drawing all inferences favorable to the position of the Government, that the property stolen or obtained by fraud and transported exceeded the requisite value.

It is well settled that where value of unlawfully obtained property is material to a criminal prosecution, the jury may not speculate or guess as to the actual value. The prosecution has the burden of proving that the specific statutory amount has been established beyond a reasonable doubt. See *United States v. Thomas*, 135 F. Supp., 662 (E. D. Pa. 1955) and *United States v. Barker*, 313 F. Supp. 987 (D. Del. 1979).

In the present case, while the Government did base its prosecution upon allegations of value which far exceeded the jurisdictional amount, there was no specific proof placed before the jury that would evidence either circumstantially or directly that the monies actually transported, *which had been obtained unlawfully*, aggregated \$5,000.00 or more.

Briefly, the facts developed in the trial court were that a dentist named Sokol licensed in New Jersey and New York along with a Doctor Ferrara formed a pro-

fessional corporation, with the design, to provide prepaid dental service to groups such as labor welfare plans, boards of education or large corporations. In or about 1976, Sokol had requested one John Burke (a co-defendant severed from the trial of Resnick), a salesman of dental equipment, to aid in the location and planning of a dental facility. Burke having had experience in the supplying of dental service equipment and in the obtaining of financing therefore, arranged a meeting for Sokol with a man named Einhorn, a vice president of Parliament Funding and Leasing Corp. (hereinafter Parliament). That corporation was primarily engaged in the business of obtaining financing for physicians and dentists who needed equipment. Parliament would, under normal circumstances lease equipment to dentists under a written installment lease. Parliament, which would purchase the required equipment from a supplier, would negotiate with a lending institution to obtain the financing needed to complete the purchase. Upon successfully satisfying the lending institution as to the credit of the professional men such as Sokol, Parliament would assign the lease to the lending institution on a discount basis. On the assignment of the lease, Parliament would be entitled to a commission and the balance of the proceeds would be transferred directly by the lending institution to the supplier of the dental equipment. Burke also received a commission on the profit made by Parliament.

In the transaction involving Sokol, Burke advised Einhorn that the cost of the dental equipment would be between \$120,000.00 and \$140,000.00. The requested financing, however, was in the amount of \$200,000.00. It should be emphasized that at no time did the Petitioner become involved in the negotiations or discussions with reference to the financing. Some time in October, 1976, Sokol signed a lease for a dental facility in New Jersey and in the

same month, gave Burke a downpayment deposit toward the purchase of the required equipment. At the end of December 1976 Sokol gave Burke an additional downpayment. Burke specified that the total retail price for the needed equipment was approximately \$134,000.00. On January 5, 1977 the lease for the dental facility was closed, and at or about the same time Resnick, the Petitioner here, executed a personal guaranty on the lease of the equipment and signed a UCC I form designating Parliament as the secured party. Subsequently on the UCC form the name of the Chase Manhattan Bank, N.A. was inserted as an assignee (out of the presence of Resnick).

One of the documents delivered to Chase by Parliament was an invoice showing the cost of the equipment to be approximately \$200,000.00. That invoice included a substantial amount of equipment which had not been sold by Pemco but which equipment had been sold by others to be installed in the dental facility. All of the equipment in the facility was covered by the UCC I (Uniform Commercial Code) form as security for the loan. The invoice itself, which was marked in evidence, was never sent to or exhibited to the Petitioner, Resnick.

It should be noted that Resnick was an officer of Metro Dental Services, Inc. (hereinafter Metro), which was formed for the purpose of providing administrative services to the dental facility to be operated by Dr. Sokol. Metro did upon completion of the loan transaction receive a rebate and the Petitioner attempted to negotiate an even larger discount with Burke.

As was stated hereinabove, the Government based its case for value, upon allegations that the invoice which was supplied in connection with the loan transaction was inflated but the Government failed to take into con-

sideration, nor was it ever demonstrated to the jury, that the additional materials, which were actually supplied to the dental facility, and did form a substantial part of the security for the loan could have brought the value of all security, up to the level of the \$200,000.00 which was the subject to the loan. The court allowed the jury to speculate as to the value of the additional items without any proof having been adduced.

B. Conspiracy.

The essential allegations of the conspiracy were that Resnick conspired with others to violate the provisions of Title 18, U.S. Code, Section 2314 by knowingly and unlawfully transporting and causing to be transported in interstate commerce money in the amount of \$200,000.00 which would be taken by fraud from the Chase Manhattan Bank.

The gist of a conspiracy is an agreement among conspirators to commit a particular offense coupled with an act by one or more of the conspirators to effect the object of the conspiracy. See *Falcone v. United States*, 311 U.S. 205 (1940). It is important under the theory of the case as it was presented by the prosecution that the conspiracy be deemed to involve an agreement to transport \$5,000.00 or more which had been obtained by fraud. An essential ingredient of conspiracy, which the Government had to prove, was the intent to commit that underlying substantive offense, of interstate transportation of stolen property. *Ingram v. United States*, 360 U.S. 672, 678 (1959.) The intent cannot exist without knowledge of the essential nature of the conspiracy. *Direct Sales Co. v. United States*, 319 U.S. 703, 711 (1944).

Proof of knowledge on the part of the Petitioner, Resnick, of the object of the alleged conspiracy, is an essential

element of the offense; See *United States v. Addonizio*, 449 F2nd 100 (3rd Cir. 1971) cert. den. Sub Nom., *Gordon v. United States*, 404 U.S. 1058 (1972). It is not only essential that the proof show that the Petitioner knowingly entered into the conspiracy but it is also essential that the proof demonstrate that the conspiracy contemplated the commission of some offense which if actually committed would violate a federal statute.

2. The Government failed to prove that the petitioner was a knowing participant in the offenses charged.

On both the conspiracy charge and the substantive charge the Petitioner, Resnick, argued throughout the course of the trial that the Government failed to establish, beyond a reasonable doubt, that he had knowledge of the essential nature of the conspiracy, *Direct Sales Co. v. United States*, 319 U.S. 703, 711 (1944) or that he knew that any part of the money obtained, by virtue of the loan transaction, and which moved in interstate commerce was obtained by fraud. The District Court as well as the Court of Appeals rejected those contentions without comment. It is suggested that a careful review of all of the evidence produced reveals no involvement by the Petitioner in the loan transaction other than as guarantor on a lease, which ultimately formed the foundation for the loan transaction, and the execution of a UCC I form pledging the equipment of the dental establishment as security for the loan.

The theory of the prosecution was reflected in the original indictment that the defendant joined a conspiracy well knowing that the conspiracy's essential objective was to defraud the Chase Manhattan Bank. Reliance was placed upon certain documents which were marked for

identification but were never received in evidence. The documents which purported to demonstrate defendant's knowledge of the alleged scheme to defraud, were ruled inadmissible by the trial court after it was discovered that all documents signed by the Petitioner did not contain the words "Chase Manhattan Bank, N.A." The words were added onto the instruments after the Petitioner had affixed his signature and were placed there without the knowledge of the Petitioner.

CONCLUSION

For the foregoing reasons and for the reason that the action by the trial court and the Court of Appeals served to deprive the Petitioner of his liberty without due process of law in violation of the Fifth Amendment to the Constitution of the United States, this Court should exercise its supervisory powers over the courts of the United States and grant this Petition.

Respectfully submitted,

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Dated: August 24, 1983

APPENDIX A

**Judgment Order of the United States Court of Appeals
for the Third Circuit**

UNITED STATES COURT OF APPEALS
For The Third Circuit

No. 82-5358

UNITED STATES OF AMERICA,

v.

STANLEY RESNICK,

Appellant.

(D.C. Criminal No. 81-398)

On Appeal from the United States District Court for the
District of New Jersey

Hon. Frederick B. Lacey, *District Judge*

Submitted Under Third Circuit Rule 12(6)
June 1, 1983

[1a]

Appendix A

Before: Gibbons and Becker, *Circuit Judges*
and Webber, *District Judge**

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JUDGMENT ORDER

Stanley Resnick appeals from a judgment of sentence following his conviction of violating 18 U.S.C. § 371 and 18 U.S.C. § 2314. He contends that the government failed to prove his knowledge of any fraud and that it failed to prove the value required by 18 U.S.C. § 2314. We find no merit in these contentions.

* Hon. Gerald J. Weber, United States District Judge for the Western District of Pennsylvania, sitting by designation.

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Appendix A

It is ordered and adjudged that the judgment of the district court is affirmed.

By the Court,

JOHN J. GIBBONS
Circuit Judge

Attest:

SALLY MRVOS
Clerk

Dated: June 2, 1983

APPENDIX B**Constitutional Provisions Involved****Amendment V**

Criminal actions—Provisions concerning—Due process of law and just compensation clauses—No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subjected for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be

APPENDIX C**Relevant Statutes Involved****Title 18 United States Code Section 371.****§ 371. Conspiracy to commit offense or to defraud United States**

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

Title 18 United States Code Section 2314.**§ 2314. Transportation of stolen goods, securities, moneys, fraudulent State tax stamps, or articles used in counterfeiting**

Whoever transports in interstate or foreign commerce any goods, wares, merchandise, securities or money of the value of \$5,000 or more, knowing the same to have been stolen, converted or taken by fraud; or

Whoever, having devised or intending to devise any scheme or artifice or defraud, or for obtaining money or property by means of false or fraudulent pretenses, repre-

Appendix C

sentations, or promises, transports or causes to be transported, or induces any person to travel in, or to be transported in interstate commerce in the execution or concealment of a scheme or artifice to defraud that person of money or property having a value of \$5,000 or more; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any falsely made forged, altered, or counterfeited securities or tax stamps, knowing the same to have been falsely made, forged, altered, or counterfeited; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any traveler's check bearing a forged countersignature; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce, any tool, implement, or thing used or fitted to be used in falsely making, forging, altering, or counterfeiting any security or tax stamps, or any part thereof—

Shall be fined not more than \$10,000 or imprisoned not more than ten years, or both.

This section shall not apply to any falsely made, forged, altered, counterfeited or spurious representation of an obligation, or other security of the United States, or of an obligation, bond, certificate, security, treasury note, bill, promise to pay or bank note issued by any foreign government or by a bank or corporation of any foreign country.

APPENDIX D

**Order of the United States Court of Appeals for the
Third Circuit Denying Petition for Rehearing**

UNITED STATES COURT OF APPEALS
For The Third Circuit

No. 82-5358

UNITED STATES OF AMERICA,

v.

STANLEY RESNICK,

Appellant.

(D.C. Criminal No. 81-398)

Before: Gibbons and Becker, *Circuit Judges*
and Webber, *District Judge**

Upon the consideration of the petition for rehearing by
petition before the original panel,

* Hon. Gerald J. Weber, United States District Judge for the
Western District of Pennsylvania, sitting by designation.

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Appendix D

It is ordered that the petition for rehearing before the panel is denied.

Dated: June 23, 1983

By the Court,

Judge